and car respectively were found immediately after the accident. The Judge, was, therefore, as he stated in this judgment, in just a good position to draw the correct inferences from those marks and positions.

We do not think it is necessary that we should examine in detail the Judge's reasons for dissenting from the Magistrate. It does not appear to be a matter of public importance if a Judge, without infringing any provisions of the law, considers that the evidence did not prove beyond all reasonable doubt that an offence had been committed, and further we are informed that the point for determination was a point of law. In regard to this aspect of the case we need only state we agree with the Judge that the evidence was insufficient to establish the charge.

For the above reasons we are of the opinion that the conviction and sentence of the appellant should be set aside.

Appeal allowed.

[APPELLATE CIVIL JURISDICTION]

GORDON-SMITH, Ag. J.A.

July 24, 1939.

A.M.M. MURUGAPPA CHETTIAR

v.

S. SEENIVASAGAM & OTHERS.

[PAHANG CIVIL APPEALS Nos. 1, 2 and 3 of 1935]

[PAHANG CIVIL SUITS Nos. 1, 2, 5 and 7 of 1934]

Costs—taxation—no certificate for two counsel—charges for attendances on and conferences with counsel—whether allowable—counsel's fees and refreshers charged in disbursement column—transposition of items to profit costs column.

In a bill of costs of the Solicitors for the defendants, although there was no certificate for two counsel, certain items were charged for conferences with counsel, and an item of $2,480/- made up as to $2,000/- as fee on brief and $480/- as refreshers appeared in the disbursement column. On taxation, the Registrar reduced the amounts of the various items charged for attendances on counsel in order to bring them within the scale laid down. As regards counsel's brief fee and refreshers, the bill was amended, at the suggestion of the Registrar, by transposing the items to the profit costs column at the figures of $1,500/- and $384/- respectively; the Registrar thought these were reasonable fees to be paid by the plaintiff and he accordingly allowed them. On an appeal from the Registrar's decision.

Held, that the various items charged for conferences with counsel were properly chargeable in a solicitor's bill and for work done as a Solicitor.

Held further, that inasmuch as fees on brief and refresher fees were entirely in the discretion of the Taxing Master and the Taxing Master had reasonably exercised his discretion, his decision in this respect must be confirmed.

APPEAL against taxation.

Ramani in support of the Appeal.

This is an Appeal against taxation and raises three separate matters.

Firstly, the Registrar was wrong in allowing fees for Solicitor's attendance and conference in addition to allowing the fees for counsel. There was no certificate for two counsel and such an allowance really involves the payment of remuneration for work done by two members of the Bar instead of one.

Secondly, the Registrar was wrong in having transposed an item of disbursement being counsel's fees as an item of profit costs after he had taxed the same. By reason of such transposition he made a present of an extra 25 per cent to the Respondent.

Thirdly, at the stage of an Appeal charges incidental to a litigant's personal presence however useful and necessary is not a proper charge the burden of which should be thrown on an unsuccessful litigant.

Hastings for Respondents:—

There are two methods of taxing a bill when a counsel not a member of the firm of solicitors instructed is employed; one is to charge a getting-up fee and the ordinary fee for attendance in Court, the other is to charge as a solicitor instructing counsel. In the latter case no getting-up fee can be allowed, but in place of it a brief fee is chargeable. This was done in this case and there is no item allowed by the Registrar which is not a proper item under this principle.

I admit the last item of $25.00 is unusual and can only be supported under the special circumstances of this case.

Gordon-Smith, Ag. J.A.—This was an appeal from the Registrar's decision in respect of various items in the bill of costs of the Defendants' Solicitors, taxed under a notice dated the 14th June, 1939. As various questions of principle arose and the matter was somewhat complicated, I thought that it might be desirable to record my decision formally in writing and lay down or reiterate certain principles which should be observed in regard to Counsel's fees. Before doing so, however, I will deal with the actual items of the Bill objected to on this appeal.

Firstly. A group of items, being Nos. 16, 39, 40, 49, 50, 51 and 66, in the Bill.

The objection under this heading was that there was no Certificate for two Counsel but that the bill as drawn charged for two counsel and that various conferences with Counsel should not have been allowed as such.

This is not correct. All these items enumerated are proper items chargeable in a Solicitor's Bill of Costs and for work done as a Solicitor, and in various respects the Taxing Master reduced the amounts charged in order to bring them within the scale laid down.

Secondly. Item 76 of the Bill "Paid fee to Counsel—$2,480.00". This figure appeared in the disbursement column and had been supported by the necessary voucher and was made up as to $2,000 as fee on brief and $480 as refreshers. In the Judgment of the trial Judge, it was ordered that "the Plaintiff pays the costs of the appeal but that on the taxation of such costs, the applicants (i.e. the Defendants) will only be allowed two-thirds of the 'getting up fee' ". Outside Counsel was briefed by the Defendants' Solicitors, and therefore, strictly speaking, there was no "getting up fee". At the suggestion of the Taxing Master, the bill was therefore amended and the Brief fee and Refresher fees were transposed to the Profit Costs column at figures of $1,500 and $384 respectively, which the Taxing Master thought reasonable Counsel's fees to be paid by the Plaintiff. This would, therefore, increase the total of the profit costs by that amount but, having regard to the order of the trial Judge, this fee of $1,500 was, at the end of the bill, included only as $1,000, and therefore the total added to the profit costs was $1,384.00.

Counsel for the Plaintiff objected to this because by adding this fee to the profit costs column, the usual 25% on the total profit costs was to be added and therefore in effect, the fee on brief was thereby raised to $1,250, and was not therefore the two-thirds of the $1,500 which the Taxing Master was prepared to allow either as getting up fee or fee on brief, whatever one cares to call it.

Fees on brief and Refresher fees are entirely in the discretion of the Taxing Master (see note to item 258 of the Schedule of Costs) and no Judge will, on appeal, interfere with that discretion where reasonably exercised and it is merely a question of quantum. I am quite certain that the Taxing Master had in mind the additional 25% when suggesting the figure for the fee on brief, and it must also be remembered that that figure was $500.00 less than the amount actually paid to Counsel. Also, I am quite certain that the learned trial Judge was aware of the additional 25% on the profit costs and it can be presumed that he had in mind this addition to the two-thirds of the getting up fee mentioned by him. So far as the bill is concerned in this respect, I confirm the decision of the Taxing Master.

The last item of the bill objected to was No. 98 which was a subsistence allowance of $25.00 to the Defendant at $5.00 a day during the hearing before the trial Judge. I can find no authority for this and it was explained that as the instructing solicitor was ill in hospital and could not attend Court, it was absolutely essential for the Defendant to be present to assist his Counsel. No attendance fee for the Solicitor was, of course, included in the bill under the circumstances. It is said that "hard cases make bad law" and although this may be a hard case, I cannot allow this item as it would create an altogether undesirable precedent.

The amount of the bill is therefore reduced by this $25.00 but, otherwise is confirmed.

I am grateful to Mr. Ramani for a copy of some rules made in the Colony for the guidance of Taxing officers in respect of allowances to Counsel. I set out these rules in an Appendix* to this decision as the principles therein contained should be observed by Taxing Officers here. The only alterations I have to substitute for the Colony items are the relevant items in force here and which are to be found in the Schedule to the Rules, made under Cap. 13 in Vol. I of the Rules made under Enactments, pages 231–248.

The only observation I would make is, that for work done as a solicitor, the proper items as per Schedule should be charged for such work whether such solicitor is, in fact, a barrister or not and similarly, of course, Counsel's fees are allowable for work done as a Counsel when a barrister's services are properly utilized.

Appeal dismissed.

*The Schedule reproduced here is published in 6 M.L.J. lxiii.